

From: [John McCoy](#)
To: ["Schoen, Michael - SOL"](#)
Cc: ["david.vansoest@tceq.texas.gov"](#); ["kelly.cook@tceq.texas.gov"](#); ["kathleen.decker@tceq.texas.gov"](#); ["susan.jablonski@tceq.texas.gov"](#); ["don.holmstrom@csb.gov"](#); ["daniel.horowitz@csb.gov"](#); ["chris.lyon@csb.gov"](#); ["johnnie.banks@csb.gov"](#); [Quinones, Edwin](#); [Hayes, Mark](#); ["jeffery.lewis@osha.gov"](#); ["madeleine.le@osha.gov"](#); ["jack.rector@osha.gov"](#); ["Mark Grotefeld"](#); [Laurence Leavitt](#); [Brook Laskey](#); [Eugene LaFlamme](#); [Matt Rosek](#); ["Mark Grotefeld"](#); ["Zona Jones"](#); ["Patrick Gareis"](#); ["mattw@CraneEngineering.com"](#); ["Waylon Pickett"](#); ["Anooj Thakrar"](#); ["Kevin Mosley"](#); ["ktaunton@ttsslawfirm.com"](#); ["Jim Klick"](#)
Subject: RE: West - NFPA guidelines pertinent to OSHA's holding of scene
Date: Tuesday, May 21, 2013 7:12:52 PM

Mike,

I sent the last e-mail without providing any explanation.

I just sent a highlighted portion of NFPA 921 that speaks to the standard for conducting complex explosion investigations like the West, Texas incident. This is considered the standard and has been widely adopted by the courts.

The most salient parts of this Code say that interested parties are not just my client as the owner of the property and government officials with a statutory need to investigate. The interested parties include those with an interest in the civil side of that which involves personal injuries, death and property damage.

I have every intention of giving all interested parties reasonable access and involvement in the investigation. I have included on this e-mail all the participants in the call this morning and a representative attorney for the subrogation claims, the death claims and a potential defendant. I have also included a representative of Crane Engineering who is the independent site manager. I tried to e-mail several OSHA representatives but I do not have a good e-mail for them.

At this point I have competing interests between all of these groups. My only goal is to allow all equal access to properly conduct the investigation they need to conduct once ATF releases the site to Crane.

I think the discussion on the Site Plan Control has to include all of these interested parties.

I am available to discuss this before the call on Thursday. I know some of the interested parties on the civil side (non-government) have called you earlier today to discuss this issue as well.

John

John V. McCoy
McCoy Leavitt Laskey LLC
Riverwood Corporate Center III
N19 W24200 Riverwood Drive
Suite 125
Waukesha, WI 53188
Phone: (262) 522-7007
Fax: (262) 522-7020

NEW: JMcCoy@MLLlaw.com
www.MLLlaw.com

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-----Original Message-----

From: John McCoy

Sent: Tuesday, May 21, 2013 6:57 PM

To: 'Schoen, Michael - SOL'

Cc: 'david.vansoest@tceq.texas.gov'; 'kelly.cook@tceq.texas.gov'; 'kathleen.decker@tceq.texas.gov'; 'susan.jablonski@tceq.texas.gov'; 'don.holmstrom@csb.gov'; 'daniel.horowitz@csb.gov'; 'chris.lyon@csb.gov'; 'johnnie.banks@csb.gov'; 'quinones.edwin@epa.gov'; 'hayes.mark@epa.gov'; 'jeffery.lewis@osha.gov'; 'madeleine.le@osha.gov'; 'jack.rector@osha.gov'; 'Mark Grotefeld'; Laurence Leavitt; Brook Laskey; Eugene LaFlamme; Matt Rosek; 'Mark Grotefeld'; Zona Jones; Patrick Gareis; mattw@CraneEngineering.com; Waylon Pickett; Anooj Thakrar; Kevin Mosley; 'ktaunton@ttsslawfirm.com'; 'Jim Klick'

Subject: FW: West - NFPA guidelines pertinent to OSHA's holding of scene

John V. McCoy
McCoy Leavitt Laskey LLC
Riverwood Corporate Center III
N19 W24200 Riverwood Drive
Suite 125
Waukesha, WI 53188
Phone: (262) 522-7007
Fax: (262) 522-7020

NEW: JMcCoy@MLLlaw.com
www.MLLlaw.com

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-----Original Message-----

From: Mark Grotefeld [<mailto:mgrotefeld@ghlaw-llp.com>]

Sent: Tuesday, May 21, 2013 10:57 AM

To: John McCoy; Laurence Leavitt

Cc: Zona Jones; Patrick Gareis; Waylon Pickett; Anooj Thakrar; Kevin Mosley

Subject: West - NFPA guidelines pertinent to OSHA's holding of scene

John & Larry:

I know both of you are very familiar with NFPA 921, however, it seems that the attorney from the Dept. of Labor is ignoring our clients' rights to have a chair at the table vis a vie the preservation of evidence and the processing of the scene. most assuredly the subrogating insurers and personal plaintiffs remain Interested Parties under anyone's interpretation of NFPA 921.

The OSHA proposed protocol ignores the rights of those that have placed your client on notice, and who have cooperated with the government investigation up to now, and it generally flies in the face of the select NFPA guidelines attached as reference.

What should be troubling to your client is the fact that the OSHA protocol burdens you with absolute

responsibility to all that have served notice upon West/Adair to properly preserve the evidence and maintain the scene. Moreover, the OSHA protocol, for no real purpose I can see, retards our clients' right to investigate the event as to other potentially culpable third parties. Given the paucity of your clients CGL coverage, should the subrogating insurers and personal plaintiffs not have a proper voice as to the next phase of the investigation there is serious concern that the havoc wreaked upon the West community will needlessly go without just compensation.

I intend to call the attorney for the Dept of Labor tomorrow to voice our concerns and would welcome your participation in that call.

Regards,

Mark Grotefeld